

LIST OF PARTIES

The Petitioner, Randall Ricci, is a citizen of the United States with a permanent residence in the State of Illinois.

The Respondent, the Village of Arlington Heights, is a Municipal Corporation organized under the laws of the State of Illinois. The Respondent has no parent corporation, subsidiaries, or affiliates and no stock in the Respondent is publicly traded.

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BRIEF IN OPPOSITION

The Respondent, the Village of Arlington Heights, Illinois, respectfully requests that this Court deny the Petition for Writ of Certiorari seeking review of the Seventh Circuit's opinion in this case.

The opinion of the United States Court of Appeals for the Seventh Circuit is reported at 116 F.3d 288 (7th Cir. 1997) and is reprinted in the Petitioner's Appendix at A1-A10. The opinion and order of the United States District Court for the Northern District of Illinois, Eastern Division, is reported at 904 F.Supp. 828 (N.D.Ill. 1995) and is reprinted in the Petitioner's Appendix at A11-A19.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254. The judgment of the United States Court of Appeals for the Seventh Circuit was entered on June 20, 1997, not June 20, 1995 as stated by the Petitioner.

STATEMENT OF THE CASE

On April 19, 1994, two Village of Arlington Heights police officers arrested the Petitioner at his place of business for operating a business without a license in violation of § 9-201 of the Arlington Heights Village Code. (Petitioner's Appendix, A2, A7, A12). The officers knew the Petitioner was operating his business in violation of the Code prior to entering the business premises, and the

violation was confirmed when the officers observed business being conducted in the presence and the Petitioner conceded to them that he did not have the required license. (Petitioner's Appendix, A2, A6). The Petitioner had been operating his business without a license for quite some time. (Petitioner's Appendix, A7).

Pursuant to the policy of the Village of Arlington Heights Police Department, the Petitioner was taken to the police station so that the charge against him could be processed. (Petitioner's Appendix, A2-3). As the Petitioner sat in an interview room at the police station, the officers prepared an arrest sheet and Local Ordinance Complaint, and bond was sought and approved. (Petitioner's Appendix, A3). The entire process took approximately one hour and the Petitioner was released upon the paperwork's completion and the issuance of a bond receipt. (Petitioner's Appendix, A3). In the interim, the Petitioner's wife obtained the required business license. (Petitioner's Appendix, A3).

The Petitioner brought an action in the United States District Court for the Northern District of Illinois under 42 U.S.C. § 1983 in which he claimed that the Village of Arlington Heights policy allowing a custodial arrest for violation of the Village business license ordinance is violative of the Fourth Amendment to the Constitution.¹ The

¹ Before the district court, the Petitioner also claimed that his arrest was without probable cause and therefore in violation of the Fourth Amendment. The district court rejected this claim on the basis that the officers observed the Petitioner violating the Code provision. (Petitioner's Appendix, A15-16). This claim was not raised on appeal and the Seventh Circuit rebuked the

district court entered summary judgment in favor of the Respondent and the Court of Appeals for the Seventh Circuit affirmed on the basis that the custodial arrest of the Petitioner was constitutionally permissible because the officers had probable cause to make the arrest and Illinois law permitted the utilization of a custodial arrest for fine-only ordinance violations. (Petitioner's Appendix, A5). According to the Seventh Circuit, the custodial arrest served the purpose of "prevent[ing] Ricci from continuing to violate a law he had been admittedly violating for some time," a purpose similar to suppressing breaches of the peace. (Petitioner's Appendix, A6-7). The length of time in which the Petitioner was held in custody, while not challenged by the Petitioner below, was determined by the Seventh Circuit to be required to "complete the necessary paperwork." (Petitioner's Appendix, A7).

REASONS WHY THE PETITION SHOULD BE DENIED

I. This Case Does Not Present An Important Constitutional Issue Which Warrants Review By This Court.

The Petitioner seeks review for the purpose of having this Court determine that the reasonable clause of the Fourth Amendment incorporates the common law rule prohibiting warrantless arrests in misdemeanor cases that

Petitioner's efforts to resurrect the claim at oral argument, noting that "a neutral magistrate following Illinois law would surely have issued a warrant in this case." (Petitioner's Appendix, A8, n.1).

do not involve a breach of the peace and therefore the Petitioner's arrest was unconstitutional. The Respondent submits that for the reasons set forth below, this case simply does not raise an important constitutional issue which warrants review by this Court.

A. Absent a seizure conducted in an extraordinary manner, "reasonableness" under the Fourth Amendment is determined by the existence of probable cause.

In *Wilson v. Arkansas*, 514 U.S. 927, 115 S.Ct. 1914 (1995), this Court held that the common law principle that required law enforcement officers to knock and announce their presence before entering a dwelling is an element of the Fourth Amendment's "reasonableness" requirement and that lower courts should balance the common law principle against countervailing law enforcement objectives. 514 U.S. at 936, 115 S.Ct. at 1919.

The Petitioner here would suggest that *Wilson* stands for the proposition that common law principles existing at the time of the framing of the Constitution are the single most important factors to be considered by federal courts in determining whether a seizure is "reasonable" under the Fourth Amendment. (Petition at p. 7). *Wilson*, however, made it clear that common law principles are only sometimes part of the "reasonableness" inquiry:

The Fourth Amendment's flexible requirement of reasonableness should not be read to mandate a rigid rule of announcement that ignores countervailing law enforcement interests. As even petitioner concedes, the common-law principle of announcement was never stated as an

inflexible rule requiring announcement under all circumstances.

514 U.S. at 934, 115 S.Ct. at 1918.

Not all Fourth Amendment cases require courts to balance common law principles against countervailing law enforcement interests as a matter of course. In *Whren v. United States*, ___ U.S. ___, 116 S.Ct. 1769 (1996), for example, this Court observed:

It is of course true that in principle every Fourth Amendment case, since it turns upon a "reasonableness" determination, involves a balancing of all relevant factors. With rare exceptions not applicable here, however, the result of that balancing is not in doubt where the search or seizure is based upon probable cause.

* * *

Where probable cause has existed, the only cases in which we have found it necessary actually to perform the "balancing" analysis involved searches or seizures conducted in an extraordinary manner, unusually harmful to an individual's privacy or even physical interest -.

116 S.Ct. at 1776.

Thus, under *Whren*, unless an arrest is conducted in an extraordinary manner, "reasonableness" under the Fourth Amendment is guided almost entirely by the existence of probable cause. *Id.* As discussed next, the Petitioner's arrest was based on probable cause and does not involve anything unusually harmful to Petitioner's privacy or his physical interests. Accordingly, this case does not fairly present the question of whether the common

law principle that permits custodial arrests for misdemeanors that involve breaches of the peace would render the Petitioner's arrest, which arguably did not involve a breach of the peace, unreasonable under the Fourth Amendment.

1. Probable cause for the Petitioner's arrest is undisputed.

Here, it is not disputed that the officers had probable cause to arrest the Petitioner for violating the Village's business license ordinance. Under this Court's decision in *Whren*, absent extraordinary intrusions to the Petitioner's privacy or physical interests, there would be no need to consider common law principles that might adversely affect the propriety of the arrest. While the Petitioner complains that vesting a police officer with the power to make a warrantless arrest is a "step toward a police state", (Petitioner's Appendix, A5), that step is always held in check by the Fourth Amendment's requirement that probable cause must exist.

2. Petitioner's arrest was not conducted in an extraordinary manner.

This Court has previously decided the issue of "reasonableness" in cases involving searches or seizures conducted in an "extraordinary manner." *Tennessee v. Garner*, 471 U.S. 1, 105 S.Ct. 1694 (1985) (seizure through use of deadly force); *Winston v. Lee*, 470 U.S. 753, 105 S.Ct. 1611 (1985) (search through physical penetration). Here, the Petitioner would have this court address this case as if

the Petitioner had been arrested in an "extraordinary manner."

Indeed, the Petitioner draws the Court's attention to *United States v. Marion*, 404 U.S. 307, 320, 92 S.Ct. 455, 463 (1971), wherein the Court stated that an "[a]rrest is a public act that may seriously interfere with the defendant's liberty, whether he is free on bail or not, and that may disrupt his employment, drain his financial resources, curtail his associations, subject him to public obloquy, and create anxiety in him, his family, and his friends."

"Reasonableness" under the Fourth Amendment is not, however, dictated by the expected or normal inconvenience and other personal aspects that may be encountered during a routine arrest. Even ordinary traffic stops entail "a possibly unsettling show of authority" and "interfere with freedom of movement, are inconvenient, and consume time" and "may create substantial anxiety." *Delaware v. Prouse*, 440 U.S. 648, 657, 99 S.Ct. 1391, 1398 (1979). The fact that the Petitioner here may have felt inconvenienced, embarrassed, or oppressed does elevate his case to one in which a balancing test must be employed under which the common law principle is weighed against the interest of the Village in processing the Petitioner and preventing his continued violation of the ordinance. To be sure, the Seventh Circuit expressed no measure of concern with the procedure through which the Petitioner was put through in the course of his arrest.

In the end, this Court is presented with a case in which the custodial arrest of the Petitioner was based upon probable cause and which was not conducted in an

extraordinary manner. There is no reason to balance the common law principle of permitting arrests only for misdemeanors that involve breaches of the peace against the interest of the Village in processing the Petitioner and preventing his continued violation of the business license ordinance. Certainly there is no reason for this Court to review this case when *Whren* and *Wilson* adequately address the constitutional issue proffered by the Petitioner.

- B. Even if the common law was to be considered in determining whether the arrest of the Petitioner was reasonable, the Seventh Circuit's opinion contains a proper constitutional analysis that does not warrant review.**

The Petitioner has raised two questions upon which review is sought. First, the Petitioner asks the Court to consider whether the common law principle of only allowing arrests for misdemeanors that involve breach of the peace should be considered in determining whether an arrest is reasonable under the Fourth Amendment. Second, the Petitioner asks this Court to determine whether one of the Seventh Circuit's bases for determining the Petitioner's arrest to be reasonable was proper. For the following reasons, the Respondent submits that neither issue warrants review in this case.

With regard to the consideration of the common law principle regarding arrests for misdemeanors when there is no breach of the peace, it is submitted that the Seventh Circuit did in fact do as directed by the Supreme Court.

In *Wilson v. Arkansas*, 514 U.S. 927, 936, 115 S.Ct. 1914, 1919 (1995), this Court correctly refused to set forth every possible law enforcement objective that could be considered by lower courts in determining whether a particular search or seizure is reasonable under the Fourth Amendment. There exists no reason for this Court to withdraw from this position. *Whren* dictates that flexibility premised upon the individual circumstances must be the order of the day. 116 S.Ct. at 1776-77.

Here, the Seventh Circuit acknowledge that under the common law, police could effect an arrest for a misdemeanor committed in their presence. The court further acknowledged that the strict common law rule had been relaxed in Illinois and other states to extend the authority to arrest to misdemeanors and ordinance violations that did not involve breaches of the peace. (Petitioner's Appendix, A6-7). According to the court:

The rationale for allowing warrantless arrests for breaches of the peace was to promptly suppress breaches of the peace. Here the arrest served a similar purpose. The arrest prevented Ricci from continuing to violate a law he had been admittedly violating for some time.

Petitioner's Appendix, A7.

From the foregoing analysis of the common law and the necessity of permitting the Petitioner's arrest, the Seventh Circuit has done exactly what the Petitioner has requested: The court incorporated the common law principle into its analysis of the reasonableness requirement of the Fourth Amendment. In light of this Court's pronouncement in *Wilson*, review by this Court would not accomplish anything more.

The Petitioner also draws on the rhetoric of the Seventh Circuit to the effect that the Petitioner's arrest was only to "ensure compliance." (Petition, at p. 5). In light of the court's analysis of the arrest as a means which "prevented Ricci from continuing to violate the law which he had been admittedly violating for some time," (Petitioner's Appendix, A7), it is submitted that the phrase "ensure compliance" has been taken out of context by the Petitioner.

In any event, the vitriolic argument that "vesting a police officer with the power to make a warrantless arrest to 'ensure compliance' is a step to a police state," (Petition, at p. 5), fails to take into account that a court's consideration of the common law, if required, is not the only level of protection to the citizenry. As noted before, the Fourth Amendment's requirement of probable cause is the most significant roadblock to "broad and unregulated power." (Petition, at p. 5).

II. There Is No Conflict Among The Federal Courts Which Requires Resolution By This Court.

The Petitioner claims that "the federal courts of appeals which have considered this issue have reached conflicting results." (Petition, at p. 6). This is simply not true. In fact, courts have consistently held that where probable cause to make an arrest exists and state law permits such an arrest, the Fourth Amendment is not violated by a custodial arrest for a fine-only ordinance violation that does not involve a breach of the peace.

Such is the view of the Seventh Circuit in this case and in *United States v. Trigg*, 878 F.2d 1037 (7th Cir. 1989),

the Fourth Circuit in *Fisher v. Washington Metropolitan Area Transit Authority*, 690 F.2d 1133 (4th Cir. 1982), the Ninth Circuit in *Higbee v. City of San Diego*, 911 F.2d 377 (9th Cir. 1990) and *Pierce v. Multnomah County*, 76 F.3d 1032 (9th Cir. 1994), and the Fifth Circuit in *United States v. Causey*, 834 F.2d 1179 (5th Cir. 1987).

With no conflict among the circuits that have decided the issue, review is not necessary and should not be granted here.

CONCLUSION

For the foregoing reasons, the Respondent respectfully requests that the Petition for a Writ of Certiorari be denied.

Dated: November 26, 1997

Respectfully submitted,

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